

HOMESTEAD CREDIT AND OTHER DEDUCTIONS

Frequently Asked Questions (FAQs)

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Terms Defined

1. Question: What is a “homestead”?

Answer: “Homestead” means an individual’s principal place of residence which:

- is located in Indiana;
- that the individual:
 - owns;
 - is buying under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence; *or*
 - is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); **and**
- the principal place of residence consists of a dwelling and the real estate (up to one (1) acre) that immediately surrounds that dwelling. IC 6-1.1-20.9-1 (repealed 1/1/09); IC 6-1.1-12-37 (eff. 1/1/09).

2. Question: What is a “dwelling”?

Answer: “Dwelling” means any of the following:

- Residential real property improvements which an individual uses as his residence, including a house or garage;
- A mobile home that is not assessed as real property that an individual uses as the individual’s residence; **or**
- A manufactured home that is not assessed as real property that an individual uses as the individual’s residence. IC 6-1.1-20.9-1 (repealed 1/1/09); IC 6-1.1-12-37 (eff. 1/1/09).

Dates/Deadlines

3. Question: What is the “trigger date” by which the homestead credit must be filed in order to receive the credit for the following calendar year’s property tax bills?

Answer: The trigger is the filing date of the application with the assessor (for purposes of the sales disclosure form in IC 6-1.1-20.9-3.5) or the county auditor (for purposes of a non-sales disclosure application in IC 6-1.1-20.9-3). Of course, the applicant must still be eligible to receive the homestead credit for the county auditor to apply the credit to the following calendar year’s property tax bill. IC 6-1.1-20.9-7.

4. Question: What is the “trigger date” by which the assessed value deductions must be filed in order to receive the deduction(s) for the following calendar year’s property tax bills?

Answer: Same as above. The trigger is the filing date of the application. IC 6-1.1-12-45.

5. Question: Since we have to allow any owners as of December 31 that have filed for deduction, does this in effect change the “ASSESSMENT DATE” to December 31 as well? What about if a property was vacant land on the assessment date (March 1) but now has a home on it?

Answer: March 1 is still the assessment date for all real and personal property (except annually assessed mobile homes – January 15). IC 6-1.1-1-2. The elimination of the March 1 ownership/contract date requirement for purposes of the homestead credit and assessed value deductions does not repeal the assessment date of March 1.

Keep in mind, however, that if a homestead was not in existence on the March 1, 2008 assessment date because the property consisted of only vacant land at the time it was assessed on March 1, 2008, the property owner is not eligible for the homestead credit/standard deduction for pay-2009. The reason is there was no “dwelling” or “principal place of residence” in existence on the March 1, 2008 assessment date – only vacant land.

The property taxes due and payable in 2009 for that property are calculated based on the March 1, 2008 assessment of the property as vacant land. Thus, no homestead credit/standard deduction is to be applied for pay-2009 for that property.

6. Question: For a deduction to apply, by which dates must the property be conveyed to the new owner?

Answer: The conveyance resulting in ownership and the application for the homestead credit/standard deduction must be filed during the calendar year (January 1 to December 31) to receive the benefit of the credit and deduction for the following calendar year. The previous filing deadline for real property owners (i.e., before June 10) and the ownership/contract date of March 1 have been repealed (except for purposes of the “carry over” provision).

7. Question: At what point are the deductions removed? Which year?

Answer: The deductions should be removed on the date the owner/contract buyer of the property no longer meets the eligibility requirements for the deduction(s) or homestead credit he is receiving for that year. However, if the current owner sells to a new owner, the “carry over” provision may “carry over” one of the original deductions to the new owner. It is important to keep track of the deduction(s)/credit on the property and which may “carry over” to a new owner.

Retroactive to January 1, 2008

8. Question: Do we need to go back and change all of the deductions we had in place for pay-2010 that were after March 1, 2008 and put them on for pay-2009?

Answer: Yes. HEA 1293 (P.L. 144-2008) was retroactive to January 1, 2008 and first applies to property taxes first due and payable in 2009. So, if a person moved into their homestead on July 7, 2008 and applied for the homestead credit, the homestead credit will apply to pay-2009 where it formerly applied to pay-2010 prior to the new law going into effect on January 1, 2008. Please ensure the applicant is eligible for the homestead credit (i.e., principal place of residence, own/contact on date application filed, etc...) .

The March 1 ownership/contract date requirement (except for “carry over” purposes) and June 10 application filing deadlines were repealed.

9. Question: If the new buyer had the deed recorded after March 1, 2008 the county auditor would not allow them to get deductions until pay-2010. Now when the new buyer comes in to file for deductions, are we to put them on for pay-2009 even though our computer system doesn't have them having ownership till pay-2010?

Answer: Yes, apply the deductions for pay-2009 so long as the new owner is eligible for the deductions, owns the property on the date he files for the deduction, and the owner files the application on or before December 31, 2008.

If a person files an application for the homestead credit in a calendar year (e.g., 2008) to claim a credit with respect to real property, the homestead credit applies for the property taxes due and payable in the immediately following calendar year (e.g., pay-2009). IC 6-1.1-20.9-7(d).

Lastly, the March 1 ownership/contract requirement deadline for the assessed value deductions and the homestead credit was repealed. IC 6-1.1-20.9-2.

10. If Bob buys a house sometime between March 2, 2008 and December 31, 2008; records the deed and mortgage by December 31, 2008 and files deduction applications by December 31, 2008; can he receive these deductions on his 2008-pay-2009 tax bill?

Answer: All deduction applications must be filed on or before December 31, 2008 to claim the deduction(s) for pay-2009, and the eligibility criteria for the deduction(s) must be met before the deduction(s) is applied to pay-2009 property taxes.

Also, on the date the application for the deduction(s) is filed, the applicant must either (1) own [i.e., holder of legal title in fee, mortgagee in possession of mortgaged premises, or life tenant in possession of real property] the real property or annually assessed mobile/manufactured home or (2) be buying the real property or annually assessed mobile/manufactured home under a contract recorded in the county recorder's office.

Carry Over Provision (IC 6-1.1-12-45)

11. Question: What are the credits and deductions that the “carry over” provision applies to?

Answer: The deductions subject to the “carry over” provision (IC 6-1.1-12-45 (eff. Jan. 1, 2008 (retroactive))) are as follows:

- Mortgage (IC 6-1.1-12-2)
- Persons over 65 (IC 6-1.1-12-10.1)
- Blind persons (IC 6-1.1-12-12)
- Disabled veteran (IC 6-1.1-12-15)
- Surviving Spouse of Veteran (IC 6-1.1-12-17)
- WWI Veterans’ Mortgage Deduction (IC 6-1.1-12-17.5)
- Rehabilitated Residential property (IC 6-1.1-12-20; -24)
- Solar energy heating or cooling system (IC 6-1.1-12-27.1)
- Wind power device (IC 6-1.1-12-30)
- Coal conversion system (IC 6-1.1-12-31)
- Hydroelectric power device (IC 6-1.1-12-33)
- Geothermal energy heating or cooling device (IC 6-1.1-12-34)
- Improvements made to comply with rules for storage of fertilizer or pesticides (IC 6-1.1-12-38).
- Homestead credit/standard deduction (IC 6-1.1-20.9-7 / IC 6-1.1-12-37)

12. Question: If a property recently purchased was transferred four (4) times in 2008 - does the most *recent* previous owner have to be entitled to receive the deductions in pay-2009 in order for the new owner to receive the benefit of “carry over”, or does it mean *any* one of the previous four (4) owners in 2008 must have been entitled to receive the deductions in pay-2009?

Answer: So long as *any* of the previous owners were deemed eligible to receive the homestead credit or any of the deductions for 2008-pay-2009, it does not matter whether the title to the homestead was conveyed one or more times between March 1, 2008 and March 1, 2009, or whether one or more of the previous owners/contract buyers filed an application for the homestead credit. What matters is that the new owner, on March 1, 2009, is eligible for the homestead credit and/or other deduction(s) for 2009-pay-2010. IC 6-1.1-20.9-7; IC 6-1.1-12-45.

13. Question: Does the new owner have to file by March 1, 2009 for the county auditor to know he is eligible for the “carry over” of the prior owner for pay-2009? We already know the new owner can file anytime in 2009 to get the benefit of the credit or deduction(s) for himself for 2010. How will the county auditor know anyone is eligible for the “carry over” by March 1, 2009 unless the owner filed an application for the credit or deduction(s) by March 1, 2009?

Answer: Yes, the new owner would have to file a credit or deduction(s) application and be deemed eligible for the deduction or credit on or before March 1, 2009. The Department knows of no other method by which the new owner could be deemed eligible for the homestead credit on March 1, 2009 without the new owner actually applying for and being determined eligible for the homestead credit or other deduction(s) by the county auditor.

14. Question: Does the county have to keep track of all deductions and credits of any owner for the application of the “carry over”?

Answer: Yes. For example, if Mr. Jones sells his house to Mr. Samuel on December 1, 2008 and Mr. Samuel files for the homestead credit/standard deduction on a sales disclosure form on December 1, 2008 and is deemed eligible, Mr. Samuel receives the benefit of that credit and deductions on his May 10, 2009 and November 10, 2009 property tax bills.

However, if Mr. Samuel buys the house on January 15, 2009 and files for the homestead and over 65 deduction shortly after the January 15, 2009 closing, he receives the benefits of the credit and deduction for pay-2010; but what about the May 10, 2009 and November 10, 2009 property tax bills? Fortunately, for Mr. Samuel the “carry over” provision was designed to protect him for pay-2009.

So, yes, the county will need to track which deductions/homestead credit may “carry over” to ensure Mr. Samuel is protected for his May 10, 2009 and November 10, 2009 property tax bills.

15. Question: A new buyer came into the county auditor's office today to file. We don't have them having ownership until pay-2010, so the auditor typed up their deductions and told them they will go on for pay-2009. When the auditor went into the computer to enter those deductions, the previous owners had different deductions. Do we delete the previous owner's deductions for pay-2009 and enter the new owner's deductions? How do we handle that?

Answer: The County will have to track all deductions and credits of any owner to ensure the next eligible owner is covered by the "carry over" provisions. IC 6-1.1-12-45; IC 6-1.1-20.9-7.

The "carry over" provision is where a previous owner's deductions and homestead credit for pay-2009 "carry over" to the new owner for pay-2009 if the new owner on March 1, 2009 is eligible for the deduction(s) or credit on March 1, 2009 for 2009-pay-2010. It was designed to protect the new homeowner who bought the house in, for example, February 2009 and filed for the homestead credit. That new owner would clearly get the benefit of the credit for pay-2010; but what about his May 10, 2009 and November 10, 2009 property tax bills? Fortunately, the "carry over" provision protects the new owners in such a situation.

The "carry over" credit or deduction does not "stay" with the homestead or real property, but "carries over" from the old eligible owner to the new eligible owner. The previous owner's deductions and credit must be tracked in case the new owner is eligible for those same deductions.

You can use any method you want that is compatible with your computer software to track the "carry over" from the old eligible owner to the new eligible owner.

16. Question: An individual buys a house August 8, 2008 that has deductions for 2008-pay-2009 such as age, mortgage, homestead and disabled. The new owner is a 40-year-old person who is not disabled. What deductions does the new owner get for 2008-pay-2009? The new owner does not file for his own deductions until February 10, 2009.

Answer: Only the deductions for which the new owner applies and is eligible for on or before December 31, 2008 will apply to pay-2009. However, if the new owner fails to file before December 31, 2008, the deduction(s) from the previous owner that the new owner is eligible for on March 1, 2009 will "carry over" and protect the new owner for pay-2009.

For example, the 40-year-old new owner will not be eligible for the over 65 deduction on March 1, 2009; thus, that deduction will not "carry over" and protect him for pay-2009. Following the same logic, the disabled deduction will not "carry over" to the new owner for pay-2009, because he will not be eligible for that deduction on March 1, 2009. The mortgage deduction is a possible "carry over" for pay-2009, but it will depend upon whether the new owner is eligible for that deduction on March 1, 2009. The homestead credit also is a possible "carry over" for pay-2009, but it will depend upon whether the new owner is eligible for the homestead credit/standard deduction on March 1, 2008 (i.e., principal place of residence, etc.)

17. Question: John Doe owned a house on March 1, 2007 and had a homestead filed. On November 1, 2007, he sold the house to Sam Smith. Mr. Smith has not re-filed (up to today's date) for a homestead. Does this come off for 2008-pay-2009 taxes? When is the last day Mr. Smith can file a homestead for 2008-pay-2009 taxes?

Answer: If Mr. Smith does not file for deductions by December 31, 2008, the homestead credit comes off for pay-2009. There is no "carry over" provision to protect him for pay-2009, because Mr. Smith was the owner of the property during the period of March 1, 2008 to March 1, 2009. In other words, there is no homestead credit/standard deduction to "carry over" from a previous owner eligible to receive the credit/deduction for pay-2009 on that homestead.

For the homestead credit/standard deduction, Mr. Smith must file an application on or before December 31, 2008 to claim the credit with respect to his homestead for property taxes due and payable in 2009.

Of course, Mr. Smith must be eligible for the credit to receive it for pay-2009. Specifically, the homestead must be his "principal place of residence," located in Indiana, owned by him [i.e., holder of legal title in fee, mortgage in possession of mortgaged premises or life tenant in possession of real property] or is buying under a contract, recorded in the county recorder's office, that provides that he is to pay the property taxes, and the homestead must consist of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

Additionally, Mr. Smith must own the property or be buying it under contract on the date the application is filed to be eligible.

Foreclosures

18. Question: Jim Brown owned a house and had a homestead filed on it. In September 2008, it was foreclosed on and deeded to the bank. Does the homestead come off for 2008-pay-2009 taxes?

Answer: Yes, the homestead should be removed, because the bank is not an individual, and the homestead is not the bank's principal place of residence. However, if a new individual (Mr. Jones) buys the homestead, and Mr. Jones is eligible to receive the homestead credit/standard deduction as of March 1, 2009, the "carry over" provision will apply Mr. Brown's pay-2009 homestead credit/standard deduction to Mr. Jones's 2009 property tax bill protecting Mr. Jones from a higher, non-homestead credit/standard deduction tax bill.

19. Question: Mary Black owned a house and had a homestead filed on it. It was foreclosed on and went back to the bank October 2007. Does the homestead come off for 2008-pay-2009?

Answer: Yes, the homestead comes off for pay-2009, because the house is no longer a "homestead." It is no longer Ms. Black's "principal place of residence." The bank is not eligible for the homestead credit/standard deduction, because the bank is not an individual eligible for the deduction nor is the house the bank's principal place of residence.

However, if a new owner – Ms. White – buys the house from Ms. Black, uses it as a homestead and is eligible to receive the homestead credit/standard deduction on March 1, 2009, Ms. White will receive the homestead credit/standard deduction for pay-2009 that Ms. Black was once eligible for in 2008 through the application of the "carry over" provision.

Homestead Credit/Standard Deduction

20. Question: Who is eligible to receive a homestead credit/standard deduction? Is a Limited Liability Company (LLC) eligible for the homestead credit/homestead standard deduction?

Answer: Only an “individual” – a human being – is eligible to receive the homestead credit/standard deduction. IC 6-1.1-20.9-1 (repealed 1/1/09); IC 6-1.1-12-37 (eff. 1/1/09). An LLC is a “person,” but is *not* an “individual.” IC 6-1.1-1-10. There is a difference between “individual” and “person.”

There is a circumstance where a taxpayer other than individual may receive the homestead credit/standard deduction:

- an individual (e.g., Mr. Smith) uses the residence as their principal place of residence;
- the residence is located in Indiana;
- the individual:
 - has a beneficial interest in the taxpayer; *or*
 - has the right to occupy the residence rent free under the terms of a **qualified personal residence trust** created by the individual under U.S. Treasury Regulation 25.2702-5(c)(2);
- the taxpayer either owns the residence or is buying it under a contract, recorded in the county recorder’s office, that provides that the individual is to pay the property taxes on the residence; and
- the residence consists of a single-family dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

21. Question: When someone applies for the homestead credit do they have to be living in the homestead on or before December 31, 2008 to receive the credit for pay-2009?

Answer: Yes. The individual must own the homestead (or be buying it under contract or occupy as a tenant-stockholder of a cooperative housing corporation) on the date the homestead credit/standard deduction application is filed. The definition of “homestead” means “an individual’s principal place of residence” – in other words, yes, the individual must own and live in the homestead to claim the credit. IC 6-1.1-20.9-2.

In addition to the ownership requirement at the time of the homestead credit/standard deduction application, the application must be filed on or before December 31 in order for the credit to apply to property taxes first due and payable in following calendar year. IC 6-1.1-20.9-7.

22. Question: If the seller is living in a home March 1, 2008, sells that home, and then moves into a newly-built house, does the homestead credit they had on their previous home stay with the house?

Answer: No. The seller’s homestead credit for 2008-pay-2009 will only “carry over” to the new owner if the new owner is eligible for the homestead credit on the “next succeeding assessment date” (i.e., March 1, 2009). Do not think of the home itself as having the credit, but the previous eligible owner’s credit “carrying over” to the new eligible homestead owner. IC 6-1.1-20.9-7.

The “carry over” provision generally is there to protect those people who buy a house between January 1 and February 28 of a year. That was the fact scenario that led to the addition of the “carry over” provision to the law in HEA 1293 (P.L. 144-2008).

23. Question: Does it matter if the previous owner of a home a new owner is moving into has the homestead credit?

Answer: It depends on the date the new owner is buying the house. For example, if the new owner buys the house on August 6, 2008 and files for the homestead credit on the sales disclosure form with the county assessor any time in 2008, IC 6-1.1-20.9-7 makes it clear the credit applies for the property taxes due and payable in 2009. Thus, in that case, it does not matter whether the newly-purchased home’s previous owner had the homestead credit or not.

However, if the house was purchased on January 10, 2009 and the previous owner did not have the homestead credit, nothing “carried over” to the new owner. Therefore, the new owner, if eligible and applied for the credit on the sales disclosure form at the January 10, 2009 closing, would not receive the homestead credit until pay-2010. There would be no “carry over” from the previous owner’s pay-2009 homestead credit because the previous owner did not have the credit.

24. Question: Can more than one individual receive a homestead credit for the same property in the same year?

Answer: No. Only one (1) individual may receive a homestead credit for a particular homestead in a year. IC 6-1.1-20.9-2.

25. Question: A father has a life estate with the remainder of interest going to his sons. One of his sons is living on the property, but the father is not. The son is paying rent to his father, and tax bills are sent to the father. Can the son receive the homestead credit/standard deduction?

Answer: In order to receive the homestead credit/standard deduction, the son must own or be buying the property under contract which provides that the buyer is to pay the taxes. The property also must be the individual's principal place of residence.

In the situation described above, the father owns the majority interest in the property for the duration of his life. Upon his death, his ownership of the property would transfer to his sons, who have the remainder of the interest. The property is the son's principal place of residence, but he does not own the property until his father's death. Therefore, both father and son are ineligible to receive the homestead deduction.

26. Question: When a trust is involved, does one of the parties have to live on the property to receive the homestead credit/standard deduction?

Answer: A non-individual taxpayer, like a trust, is entitled to the homestead credit/standard deduction if:

- (1) an individual uses the residence as a principal place of residence;
- (2) the residence is located in Indiana;
- (3) the individual:
 - (A) has a "beneficial interest" in the taxpayer; or
 - (B) has the right to occupy the residence rent free under the terms of a qualified personal residence trust (QPRT) created by the individual under United States Treasury Regulation 25.2702-5(c)(2);
- (4) the taxpayer either owns the residence or is buying it under a contract, recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence; and
- (5) the residence consists of a single-family dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds the dwelling. IC 6-1.1-20.9-2.

27. Question: Can an individual residing in a nursing home or long-term care facility still receive the homestead credit/standard deduction?

Answer: The property must be the primary place of residence for the individual applying for the homestead credit/standard deduction. However, circumstances may arise when the individual is temporarily living in a nursing home or long-term care facility with the full intention of returning to the home after fully recuperating. In these instances, when the property is maintained as a home, and the individual intends to return to the property, err on the side of benefiting the taxpayer and grant the homestead credit/standard deduction.

28. Question: Can a married couple or individual claim a homestead credit/standard deduction on multiple homesteads in the same year?

Answer: No. Beginning with property taxes due and payable in 2009, the county auditor is prohibited from granting an individual or a married couple a homestead standard deduction/homestead credit if:

(1) for the same year, the individual or married couple claims the homestead standard deduction on two (2) or more different deduction applications; and

(2) the applications claim the homestead standard deduction for different property. IC 6-1.1-12-37.

29. Question: Our county has a lake that is surrounded by cottages. Some of the residents of these cottages are out-of-state residents that live on the lake only in the summertime. Are the out-of-state residents entitled to a homestead credit on their Indiana lake cottage?

Answer: Whether the individual is entitled to the homestead credit/standard deduction depends on whether they use the lake house as their “homestead.” IC 6-1.1-20.9-2 (repealed 1/1/09); IC 6-1.1-12-37 (eff. 1/1/09). To determine whether the individual uses their lake cottage as a homestead, the county auditor must first determine whether the lake cottage is the individual’s “principal place of residence.”

To determine “residence,” and thus eligibility for the homestead credit/standard deduction, look at the following:

- whether the individual registers his car(s) in Indiana,
- whether he files an income tax return in Indiana,
- whether he is registered to vote in Indiana,
- whether he has an Indiana driver’s license, and
- whether he receives a homestead-type credit/standard deduction in any other state.

Lastly, ask the homestead credit/standard deduction applicants whether they are Indiana residents, and if they are not, whether they intend to become Indiana residents. If, after you ask these questions, you are satisfied the individuals use the lake cottages as their “principal places of residence,” grant them the homestead credit/standard deduction.

30. Question: What are the penalties for filing for a homestead credit in two counties? How can this double dipping be prevented? What can be requested as proof of residence?

Answer: County auditors can go back three years to adjust for filing homesteads in two counties. To control the filing of multiple residences, contact with other counties is recommended. A driver’s license or voter’s registration card should be requested as proof of residence.

31. Question: Jill Green owned a house and has a homestead filed on it. She moved out of the house in August 2008 (moved out of state – house is now being used as a rental property.) Does the homestead come off for 2008-pay-2009 taxes?

Answer: Yes, the homestead comes off for pay-2009, because the house is no longer a “homestead.” It is no longer Ms. Green’s “principal place of residence” but instead is rental property. However, if a new owner, Ms. Samuel, buys the house from Ms. Green, uses it as a “homestead” and is eligible to receive the homestead credit/standard deduction on March 1, 2009, Ms. Samuel will receive the homestead credit/standard deduction for pay-2009 that Ms. Green once was eligible for in 2008.

Lastly, if an individual who is receiving the homestead credit/standard deduction changes the use of the real property so that it no longer qualifies for the homestead credit (i.e., Ms. Green by changing the use from homestead to rental property), the individual is required to file a certified statement with the county auditor notifying the auditor of the change of use within sixty (60) days after the date of that change. If the individual failed to file the statement as required, the individual would be liable for the amount of the credit the individual was allowed for that real property. IC 6-1.1-20.9-3(c).

32. Question: A taxpayer moves into an apartment. She still owns a home with homestead and age deductions. When do the deductions come off? Would that be the same case if a mortgage deduction also was on the property?

Answer: The credit/deductions should be removed on the date the owner of the property no longer meets eligibility requirements for the deduction(s) or homestead credit she is receiving for that assessment year. In the example above, the taxpayer who owned the homestead on March 1, 2008, moved into an apartment later in 2008, but kept the house she once used as the homestead would lose her eligibility on the homestead credit/standard deduction for pay-2009, because the home is no longer a “homestead” -- it is no longer the taxpayer’s principal place of residence.

If the current owner sells the home, the “carry over” provision will “carry over” any of the original deductions for which the new owner is eligible to receive on the next succeeding assessment date. It is important to keep track of the credit/deduction(s) on the property, which may “carry over” to a new owner.

For example, in order for Mr. Smith (new owner) to receive the homestead deduction for 2008-pay-2009, he can apply for the deduction/credit on or before December 31, 2008 or receive the deduction/credit through the “carry over” provision from the previous owner as long as Mr. Smith is eligible to receive the deduction/credit on March 1, 2009, the next succeeding assessment date.

33. Hypothetical Scenario: Mr. Jones owns two parcels of property on March 1, 2007. One is his primary residence on March 1, 2007. In December 2007, he sells his primary residence to Mr. Smith and moves to his other property. Mr. Smith believes he will receive credit for the homestead that was in effect on March 1, 2007 on his newly acquired property. He also filed for the homestead credit/standard deduction for 2008-pay-2009. Mr. Jones has requested the Auditor move his homestead credit and disability deductions from the property that he sold in December 2007 to his other property to which he moved. This new home was not his residence on March 1, 2007. Mr. Jones wants the homestead and other deductions to be effective with his 2007-pay-2008 tax bill.

Question: Is this legal? Should the deductions stay with the property sold to Mr. Smith and require Mr. Jones to re-file on the property that he just moved to in December 2007 for the 2008-2009 taxes?

Answer: The “old” law applies to this fact pattern. HEA 1293 (P.L. 144-2008) which repealed the March 1 ownership / contract requirement date and June 10 filing deadline went into effect on January 1, 2008 (retroactive) and applies to property taxes first due and payable in 2009.

As a result, in the abovementioned example, the “old” deadlines would apply. Thus, if Mr. Smith files in December 2007 for his homestead credit, he’ll receive the benefit of his homestead credit for property taxes due and payable in pay-2009, but not pay-2008. Mr. Jones will also get his homestead credit on his new homestead for property taxes due and payable in pay-2009, but not pay-2008 because he filed for the homestead credit after the old deadline of June 10, 2007.

34. Question: A person files for a deduction by December 31, 2008 and meets the eligibility requirements for that deduction. The deed and mortgage also are recorded by December 31, 2008. Can this person receive the deduction on his 2008-pay-2009 tax bill?

Answer: All deduction applications must be filed on or before December 31, 2008 to claim the deduction(s) for 2008-pay-2009, and the eligibility criteria for the deduction(s) must be met before the deduction(s) is applied to 2008-pay-2009 property taxes.

Also, on the date the application for the deduction(s) is filed, the applicant must either (1) own [i.e., holder of legal title in fee, mortgagee in possession of mortgaged premises, or life tenant in possession of real property] the real property or annually assessed mobile/manufactured home or (2) be buying the real property or annually assessed mobile/manufactured home under a contract recorded in the county recorder's office.

Specifically, for the mortgage deduction, the application must be verified under penalties of perjury, and the application must contain the following information:

- (1) The balance of the person's mortgage or contract indebtedness on the assessment date of the year for which the deduction is claimed.
- (2) The assessed value of the real property, mobile home, or manufactured home.
- (3) The full name and complete residence address of the person and of the mortgagee or contract seller.
- (4) The name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact.
- (5) **The record number and page where the mortgage, contract or memorandum of the contract is recorded.**
- (6) A brief description of the real property, mobile home or manufactured home, which is encumbered by the mortgage or sold under the contract.
- (7) If the person is not the sole legal or equitable owner of the real property, mobile home or manufactured home, the exact share of the person's interest in it.
- (8) The name of any other county in which the person has applied for a deduction under this section and the amount claimed in that application. IC 6-1.1-12-2.

If an application is received on December 31, 2008, and there is no record number and page where the mortgage, contract or memorandum of the contract is recorded, which is required information on the application – under penalties of perjury – the applicant is not eligible.

35. Question: Mr. Foley is selling to Mr. Ferguson on contract March 10, 2008. Mr. Foley has a homestead credit filed. Mr. Ferguson has not re-filed. Does the homestead come off for 2008-pay-2009?

Answer: Yes, the homestead comes off for 2008-pay-2009 unless Mr. Ferguson files for the homestead credit on or before December 31, 2008 and meets the eligibility requirements for the credit. If the “carry over” provision applies and Mr. Ferguson is found to be eligible for the homestead credit/standard deduction on March 1, 2009, Mr. Foley’s homestead credit/standard deduction for which he was eligible to receive in pay-2009 “carries over” to Mr. Ferguson for pay-2009.

36. Question: A non-profit property is sold to an individual February 1, 2009. The new owner files for his homestead on December 31, 2009. Does the new owner get the non-profit exemption for 2010 or is it removed and the homestead granted?

Answer: The non-profit exemption should be removed as of March 1, 2009 for 2009-pay-2010 taxes. However, the new owner would receive the homestead for 2009-pay-2010.

37. Question: For taxes due and payable in 2008, a taxpayer is buying his house on contract. He is in the third year of the contract and was not aware that he could file for a mortgage deduction and homestead. On March 11, 2007, he recorded the contract and filed for the mortgage deduction and homestead. The deduction filing deadline was extended to October 15, 2007. What about the March 1 assessment date? He has owned the property (via contract) for three years. For 2007-pay-2008, do we consider the recorded date by March 1? Would the deductions be applied for 2007-pay-2008 or does the taxpayer have to wait until 2008-pay-2009?

Answer: This question is to be answered under the “old” law (pre-HEA 1001 and pre-HEA 1293). IC 6-1.1-20.9-1(1)(2)(B)(ii). There is a difference between buying a homestead under a *land contract*, and actually owning the homestead, as represented by a *deed*. The homestead deduction/credit law specifically requires a land contract be recorded in the county recorder’s office to be eligible for the homestead credit/standard deduction, and that such contract specify that the individual is to pay the property taxes on the homestead.

Under the facts above, if the land contract was not recorded until March 11, 2007, it is on March 11, 2007 that the applicant becomes eligible to receive the homestead credit/standard deduction. Under the “old” law, the applicant was required to own or be buying the homestead under a recorded contract on March 1, 2007 in order to receive the homestead credit/standard deduction for 2007-pay-2008. As a result, under these facts, the taxpayer will not receive the homestead credit/standard deduction until his 2008-pay-2009 property taxes because the land contract was not recorded on March 1, 2007.

Mortgage Deduction

38. Question: For the mortgage deduction, in order to determine the amount of the mortgage balance and the amount of the deduction, do we still need to look at the mortgage balance on the March 1 assessment date? Doesn't the March 1 assessment date still matter?

Answer: Yes, for purposes of determining the mortgage balance and the amount of the mortgage deduction, the law still requires the county auditor look at the balance of the mortgage on the assessment date.

Specifically, the mortgage deduction law provides that “the total amount of the deduction which the person may receive ... for a particular year is:

- (1) the balance of the mortgage or contract indebtedness on the assessment date of that year;
- (2) one-half (1/2) of the assessed value of the real property, mobile home, or manufactured home; or
- (3) three thousand dollars (\$3,000);

whichever is least.” IC 6-1.1-12-1(b).

Therefore, the balance of the mortgage on the March 1 assessment date is to be considered for purposes of the amount of the mortgage deduction.

Keep in mind, however, as with the other deductions and homestead credit, the actual filing deadline for the mortgage deduction is December 31 in order to receive the benefit of the deduction on the following year's property tax bills.

39. Question: A parcel is transferred after March 1, 2008 (2009-pay-2010 property tax year). The property went from a bank to a new homeowner. The new homeowner filed for a Mortgage Deduction on July 29, 2008. Should we apply the deduction for 2008-pay-2009 or wait and apply it to 2009-pay-2010 property taxes?

Answer: If otherwise eligible for the mortgage deduction, the new owner, who filed for the mortgage deduction on July 29, 2008, will receive the deduction of \$0 for 2008-pay-2009. An explanation of the \$0 deduction is as follows.

For all deductions, if an application is filed on or before December 31, and the eligibility requirements for the particular deduction are met, the deduction will apply to property taxes due and payable in 2009. IC 6-1.1-12-45. That also is true for the homestead standard deduction and credit. IC 6-1.1-20.9-7.

Specifically for the mortgage deduction, if the new owner on July 29, 2008 is an Indiana resident who owns (or is buying under contract) mortgaged real property, the total amount of the mortgage deduction he can receive is the least of:

- (1) the balance of the mortgage on the March 1, 2008 assessment date (\$0 under the above fact pattern);
- (2) one-half (1/2) of the assessed value of the real property; or
- (3) \$3,000.

Since the least of the three amounts for 2008-pay-2009 is \$0, the amount of the deduction is \$0. In pay-2010, the county auditor will know, based upon the mortgage deduction application filed on July 29, 2008, that there is a mortgage balance that should be considered to determine the amount of the deduction for pay-2010.

40. Question: How would the county auditor determine when to pull the mortgage deduction (which year) when the mortgage is released?

Answer: There would be no allowable mortgage deduction for property taxes due and payable in the year there is no longer a mortgage balance on the assessment date. As stated above, the amount of the mortgage deduction is the least of the balance of the mortgage on the assessment date (i.e., March 1), 1/2 of the assessed value of the subject property, or \$3,000. Therefore, the \$0 mortgage balance would be the least of the three and would effectively remove the deduction.

41. If Sam buys a house sometime between March 1, 2008 and December 31, 2008 and records the deed and mortgage by December 31, 2008. The house has a mortgage deduction on it from the previous owner. Can Sam receive this deduction for 2008-pay-2009? Will Sam need to file deduction applications before December 31, 2009 to get deductions on his 2009-pay-2010 tax bill?

Answer: The new owner, Sam, only will receive the protection of the previous owner's mortgage deduction through the "carry over" in pay-2009 if he is eligible for this deduction on March 1, 2009.

However, in the fact pattern presented, the "carry over" is not necessary for Sam to receive the deduction in pay-2009. Sam will receive the mortgage deduction for pay-2009 regardless of the "carry over" provision, because he filed for the deductions on or before December 31, 2008 and met the eligibility criteria for the deduction (i.e., he owned the property on the day he filed the application for the mortgage deduction; and the application contained of the required information, including the record number and page where the mortgage is recorded.)

Sam will need to file deduction applications for 2009-pay-2010 only if the "carry over" provision applied. The "carry over" provision only is good for one year (pay-2009). For pay-2010 and beyond, Sam will need to file. IC 6-1.1-12-45.

Disabled Veteran Deduction

42. Question: A widowed woman was married to a disabled veteran of the armed forces. While he was living, the deceased veteran's name was not on the deed to the house where the widow resides. It was the widowed woman's property. The widow wants to apply for one of the disabled veteran's deductions on that property. While the disabled veteran was alive, the couple did not receive the deduction on the property. Is the widow eligible to receive the veteran's deduction?

Answer: No, she is not eligible for the disabled veteran's deduction, because while he was living, the deceased disabled veteran did not *own* the property on which the surviving spouse is claiming the deduction. During the disabled veteran's life, the deed to the house was in her name alone – not as tenants by the entirety (i.e., husband and wife together).

Under both statutes pertaining to deductions for disabled veterans (IC 6-1.1-12-13; -14), the surviving spouse of a disabled veteran only is able to receive the deduction if the deceased disabled veteran would qualify for the deduction if the disabled veteran were still alive. In the fact pattern above, when the disabled veteran was alive, his name was not on the deed to the property for which the widow is seeking the deduction. Therefore, even if the disabled veteran husband were alive, he would not qualify for the deduction, because he did not own the property nor was he buying it under a contract. In other words, this was his wife's property, not his. As a result, since the disabled veteran did not qualify for the deduction when he was alive, the surviving spouse does not qualify for it either.

43. Question: If deductions now are being applied for 2008-pay-2009, should deductions the taxpayer is not eligible for come off for 2008-pay-2009? For example, an individual purchased a property that had a veteran deduction. The new owner is not eligible, and previous owner could apply for the deduction on his new property. Could there be two veteran deductions?

Answer: Deductions for which the taxpayer is not eligible should come off. The new owner did not file for the veteran's deduction nor is he eligible for the veteran's deduction on or before December 31, 2008. Additionally, the previous owner's veteran's deduction will not "carry over" and benefit the new owner for pay-2009 because the new owner is not eligible for the veteran's deduction on the next succeeding assessment date of March 1, 2009.

Over 65 Age Deduction

44. Question: A property is deeded in two names (unrelated individuals) and is the primary residence of both individuals. One individual's income is within the requirement but the other's is not. Both parties complete individual tax returns. The assessed value of the property is within the requirement. If the individual who meets the income requirement files for the deduction, can he receive it?

Answer:

Individual A:	AV = \$140,000
	Income = \$25,000 (qualifies)
	Primary Residence of A
Individual B:	AV = \$140,000
	Income = \$75,000 (does not qualify)
	Primary Residence of B

In order to meet the income requirement and be eligible to receive the Over 65 Deduction, the combined adjusted gross income of the owners must not exceed \$25,000. Hence, the combined income of the two individuals, assuming they own the property as joint tenants or tenants in common, exceeds the income limit. They would not be eligible to receive the deduction.

45. Question: Why does the Over 65 Circuit Breaker Credit not allow taxes to increase more than 2 percent?

Answer: This income based credit will apply to a taxpayer who is at least 65 years of age on or before December 31 of the calendar year immediately preceding the calendar year in which the taxes are due and whose homestead property taxes increase by more than 2 percent from the prior year. An applicant's adjusted gross income may not exceed \$30,000 or \$40,000 for a married couple filing jointly. In addition, the assessed value of the property must be \$160,000 or less.

46. Question: For the Over 65 Circuit Breaker Credit, how are local auditors supposed to flag those properties occupied by seniors. How will seniors meeting the income requirements be identified?

Answer: The same form will be used to apply for the Over 65 Age Deduction and the Over 65 Circuit Breaker Credit. This form is available at <http://www.in.gov/icpr/webfile/formsdiv/43708.pdf>.

47. Question: Is someone applying for the over-65 deduction required to have lived on the property for at least one year under IC 6-1.1-12-9? At a recent meeting, some were talking about putting the over-65 deduction on a new property and still allowing the taxpayer to receive the deduction on the old property. What is correct?

Answer: Despite the changes to the law in 2008, for the over age 65 deduction, it is still a requirement that in order to receive the over 65 deduction the individual must own the real property, mobile home, or manufactured home for at least one (1) year before claiming the over 65 deduction.

Applying Deductions to Split Parcels

48. Question: What about a buyer who purchased only one (1) acre and a house out of a larger tract of land? How is this to be handled with the new law and does the new law basically reset the assessment to December 31 from now on, rather than the March 1 assessment date for all properties, or for “splits” only?

Answer: March 1 is still the assessment date for all real and personal property (except mobile homes). IC 6-1.1-1-2. This is particularly important to keep in mind with regards to “splits.” Think of a “split” as when it would be in place for assessing. In other words, use the March 1 assessment date as a cut-off -- a “split” existing on or before the March 1, 2008 assessment date is effective for 2008-pay-2009, any “split” in place after the March 1, 2008 assessment date is for 2009-pay-2010.

With the changes to the new law, consider property transfers and deductions as having a deadline of December 31. This can be accomplished by taking the previous March 1 ownership requirement date and June 10 application deadline and replacing both dates with the new December 31 deadline.

Personal Property Mobile Homes

49. Question: Mr. & Mrs. Smith own a personal property mobile home and the land it sits on for tax year 2006-pay-2007. For 2006-pay-2007, the Smiths had a homestead, mortgage, and over age 65 deduction. Can the Smiths keep all of those deductions on their land for 2007-pay-2008 and keep their homestead credit on their personal property mobile home as well?

Answer: Yes, as long as Mr. & Mrs. Smith are still eligible to receive the homestead credit, mortgage deduction, and over age 65 deduction for 2007-pay-2008. For example, Mr. & Mrs. Smith can still receive a Homestead Credit/Standard Deduction for a personal property mobile home, so long as:

1. the Smiths use it as their principal place of residence;
2. the principal place of residence is located in Indiana; *and*
3. the Smiths own (or buying under contract) the personal property mobile home and the immediately surrounding real estate (up to one (1) acre). IC 6-1.1-20.9-1 (repealed 1/1/09); IC 6-1.1-12-37 (eff. 1/1/09).

With regards to the mortgage and over age 65 deductions, those also apply to an owner of a personal property mobile home. See the June 9 memorandum on *Property Tax Deductions* at: http://www.in.gov/dlgf/files/Memo-Property_Tax_Deductions.pdf.

50. Question: A taxpayer owns a mobile home, which will be assessed as personal property on January 15, and he owns one acre of land on which the mobile home sits. Does he receive the homestead on the land and the mobile home or does he receive the homestead on the mobile home only?

Answer: If the taxpayer is eligible to receive the homestead credit/standard deduction, the taxpayer can receive the homestead on the land and the personal property mobile home. For example, the taxpayer is eligible to receive a homestead credit/standard deduction for a personal property mobile home, so long as:

- (1) the dwelling (i.e., personal property mobile home) is his principal place of residence;
- (2) the principal place of residence is located in Indiana; and
- (3) he owns (or is buying under contract) the personal property mobile home and the immediately surrounding real estate (up to one acre).
IC 6-1.1-20.9-1 (repealed 1/1/2009); IC 6-1.1-12-37 (effective 1/1/2009)

Certifying Net Assessed Values

51. Question: How am I, a County Auditor, to account for the elimination of the filing deadlines for the deductions and homestead credit when I certify my county's net assessed values to the Department of Local Government Finance ("Department")?

Answer: Beginning with property taxes first due and payable in 2009, the county auditor may, for each taxing unit, reduce for a calendar year (e.g., 2009) the taxing unit's assessed value that is certified to the Department and used to set tax rates for the taxing unit (i.e., net assessed values) for taxes first due and payable in the following calendar year (e.g., 2010).

The county auditor may make such a reduction only to enable the taxing unit to absorb the effects of reduced property tax collections in the following calendar year (e.g., 2010) that are expected to result from **any or a combination of the following:**

- (1) Successful property assessment appeals.
- (2) Application of the homestead standard deduction that result from the granting of applications after the county auditor certifies assessed value.
- (3) Application of the deductions on the sales disclosure form (solar energy, wind power, hydroelectric, and geothermal device deductions) after the county auditor certifies assessed value.

Before December 31 of each year, the county auditor must send a certified statement to the fiscal officer of each political subdivision of the county and to the Department. The certified statement must list any adjustments to the amount of the assessed value reduction and the information necessary as the result of processing homestead credit applications and deduction applications filed after the county auditor certifies assessed value.

Also, the county auditor must keep separately on the tax duplicate the amount of any reductions made. **The amount of the reduction in a taxing unit's assessed value for a calendar year may not exceed two percent (2%)** of the assessed value of tangible property subject to assessment in the taxing unit in that calendar year.

Sales Disclosure Form as an Application

52. Question: Who keeps the original sales disclosure form when it is used as an application for the homestead credit/standard deduction, solar energy heating or cooling systems deduction, wind power device deduction, hydroelectric power device, and/or geothermal device deductions?

Answer: The County Assessor is required to keep the original sales disclosure forms for five (5) years. IC 6-1.1-5.5-3(c). The County Auditor is required to keep the copies of each homestead credit / standard deduction application filed on the sales disclosure form and on the DLGF Form HC-10 (State Form 5473). IC 6-1.1-20.9-5(a)(repealed eff. 1/1/09).

53. Question: What if a sales disclosure form is signed on December 31 but not filed until two weeks later. What date should be used for applying the deduction? Is there a deadline for title companies to submit sales disclosure forms to the county auditor?

Answer: The trigger is the filing date of the application with the county assessor (for purposes of the sales disclosure form) or the county auditor (for purposes on a non-sales disclosure form application). If the date of the application for the deduction or homestead credit is December 31, 2008 and the filing date of the application is January 2, 2009 due to a delay beyond the control of the taxpayer, the taxpayer should be granted the deduction or credit for 2008-pay-2009.